

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

GEOSTELLAR, INC.,

Debtor.

Bankruptcy Case No. 18-00045
Chapter 7

MARTIN P. SHEEHAN, TRUSTEE,

Plaintiff,

v.

DAVID ANDREW LEVINE,

Defendant.

Adversary Proceeding No 19-00024

MOTION TO DISMISS AND MOTION TO COMPEL ARBITRATION

AND NOW comes the Defendant, DAVID ANDREW LEVINE, in the Adversary Proceeding Only, by and through his attorneys, Zimmer Kunz, PLLC, and files the within Motion to Dismiss and Motion to Compel Arbitration.

1. Plaintiff Trustee Martin P. Sheehan filed his Amended Complaint on September 24, 2021
2. Defendant David Andrew Levine files this Motion to Dismiss and Motion to Compel Arbitration based on the Court's February 7, 2020 Memorandum Opinion finding that all of the Trustee's claims against Mr. Levine shall be heard at arbitration pursuant to the terms of Mr. Levine's Employment Agreement with Geostellar, Inc.
3. Defendant Levine further moves for dismissal of the Trustee's Amended Complaint for failure to state a claim under the gist of the action doctrine and economic loss doctrine.

4. Defendant Levine hereby incorporates by reference his Memorandum of Law in Support of Motion to Dismiss and Motion to Compel Arbitration as if the same were set forth herein at length.

WHEREFORE, Defendant David A. Levine respectfully requests this Court grant his Motion to Dismiss and Motion to Compel Arbitration and forward all of the Trustee's claims against Mr. Levine to arbitration in accordance with the terms of Mr. Levine's Employment Agreement with Geostellar.

Respectfully submitted,

ZIMMER KUNZ, PLLC

Date: October 7, 2021

By: /s/George N. Stewart
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Attorneys for Defendant,
David Andrew Levine in the Adversary
Proceeding Only

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than 18 years of age and that I served the Motion to Dismiss and Motion to Compel Arbitration in the above-captioned proceeding on the parties listed below on October 7, 2021.

In addition, I caused a copy of the above-captioned pleadings to be served on all parties who have electronically entered a notice of appearance through the notice of filing generated by the Court's Case Management/Electronic Case File CM/ECF System.

The type of service made on the parties is specified below.

Electronic Mail:

Martin P. Sheehan, Trustee
Sheehan & Associates, PLLC
41 – 15th Street
Wheeling, WV 26003

Patrick S. Cassidy, Esquire
Cassidy, Cogan, Shapell & Voegelin, L.C.
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Respectfully submitted,

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ORDER OF COURT

AND NOW, this _____ day of _____, 2021, upon consideration of Defendant David Andrew Levine's Motion to Dismiss and Motion to Compel Arbitration, it is hereby ORDERED that said Motion is GRANTED. The Plaintiff's Second Amended Complaint is dismissed, with prejudice.

[Alternatively, all of the Plaintiff Trustee's claims against Defendant shall be transferred to arbitration in accordance with the terms of Defendant's Employment Agreement and Addendum with Geostellar, Inc.]

BY THE COURT,
